IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5943 of 1991

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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EXECUTIVE ENGINEER,
PANCHAYATS ROADS & BUILDINGS,
DISTRICT PANCHAYAT, SURENDRANAGAR
Versus
FATEHMOHAMAD AMIRJIBHAI AND ORS.

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Appearance:
1. Special Civil Application No. 5943 of 1991
MR DD VYAS for Petitioner No. 1
MRS DT SHAH for Respondent No. 1-2,19
FRESH NOTICE REQD(R) for
Respondent Nos. 3-18,20-21

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CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 19/08/2004

ORAL JUDGEMENT

1. The challenge, in this petition under Article 227

of the Constitution of India, is against the award passed by the Labour Court, Surendranagar in Reference (Demand) No.3 of 1989 dated 31-01-1991, whereby, the respondent-workmen are treated as work-charged employees and petitioner is directed to accord all monetary employment benefits upon that status wef 01-01-1986.

2. A few relevant and material facts need narration so as to examine, appreciate and determine the merits of the petition, which is filed only under Article 227 of the Constitution of India, by the respondent-workmen jointly, by raising an industrial dispute, which came to be referred to the Labour Court by the Additional Labour Commissioner, by order dated 1st September, 1983. The demand `inter-alia' included the claim for regularisation on the post on which the workmen were working, contending that on that post, they were working like permanent workmen, as the activity of construction is a continuous process and they have been working since many years.

3. It was also the case of the respondent-workmen that as per the government administrative rules, if a workman has worked continuously for more than six months, the workmen is required to be made permanent. It is in this context that they raised the demand to regularise them and make them permanent wef 01-10-1982.

4. The petitioner opposed the claim-petition and the agenda of the demand in the Reference by filing Written Statement, Exh.11, `inter-alia' contending and denying the right to be regularised and to be made permanent by the petitioner. The petitioner's case has been that work of the respondent-workmen has been dependent upon the exigency of the situation, and as and when work would be over, their services shall stand discharged or terminated.

5. The Labour Court, upon examination of the evidence and factual profile in the light of the legal settings, partly allowed the Reference, to make the workmen, as work-charged employees and directed the petitioner-employer to pay their wages along with other incidental service benefits of a work-charged employee. That is how the petitioner has, now, come up before this Court by filing the Writ Petition only under Article 227 of the Constitution of India.

6. Let it be manifestly, again, articulated that the powers of a Writ Court, under Article 227 of the Constitution of India, are supervisory in nature. This Court does not sit as an appellate authority and,

therefore, the total reappreciation of evidence cannot be made. Even if a different better view is possible, then also, the Writ Court cannot interfere simply on that ground. The main anxiety of the Court, while dealing with the petition under Article 227 of the Constitution of India, is to see as to whether the authority below or any Court or Tribunal, has breached or not, the fundamental principles of natural justice, and that the ultimate conclusion, which is recorded, is not vitiated on account of any extraneous consideration, or the impugned order or judgment or decision, in any way is so perverse, which has resulted into gross miscarriage of justice, and not the quality or the type of the decision rendered. This proposition of law has been extensively explored and very well established, requiring no further elaboration. In this connection, the propositions of law relatable to Articles 226 and 227 and when only Article 227 would be attracted in such case, elaborately elucidated in "Sadhana Lodh v. National Insurance Co.Ltd. and Anr., 2003 (3) SCC 524" shall apply on all force.

7. Keeping in mind the entire factual profile, the relevant legal settings, the settled principles of law referable to the entertainment of a writ petition, and the text and tenor of the impugned award, in which the entire relevant evidence is discussed threadbare in the light of the administrative instructions as well as relevant rules of the Government, the final award passed by the Labour Court, granting present respondent-workmen, a status of work-charged employees, instead of daily-wagers, and to give such wages and other monetary benefits flowing from the employment as work-charged employee, in the opinion of this Court, is quite in consonance with the relevant rules, practice and procedure, requiring no interference of this Court in exercise of its writ jurisdiction.

8. No procedural lapse is noticed or argued; nothing has been spelt out from the record, which would, even remotely, convey the consideration of extraneous circumstances or material; there is no patent or palpable error on the face of the record, which could be said to have resulted into miscarriage of justice. The Labour Court has, in greater details, examined and dealt with the proposition advanced on facts in the light of relevant provisions of law, and thereafter, the impugned award is passed. It is in this context, the petition is without any substance and deserves only and only one legal fate of rejection with costs. It is, therefore, rejected accordingly with costs.

9. Unfortunately, as it is stated at the Bar, that despite the order of the Labour Court long before, it is not so far implemented. In view of the peculiar facts and circumstances and special circumstances, the petitioner-authority is, therefore, directed to implement and accord all benefits flowing from the impugned award to the respondent-workmen, as early as, possible, but not later than 19th November, 2004, failing which it will be open for the respondent-workmen to pursue proper legal redressal. Rule discharged.

(J. N. BHATT, J.)

/shamnath